

REMARKS

Claims 1-9 and 11-15 are now pending in this application for which applicant seeks reconsideration.

Restriction

The examiner withdrew claims 12-14 because they are alleged to be directed to an invention different from that of claims 1-11. Applicant traverses such restriction because the examiner failed to present a bona fide restriction requirement according to U.S. patent practice. Claims 12-14 ultimately **DEPEND** from independent claim 1, 2, or 7, and further define additional features, namely the first storage device and additional encryption. The examiner's rationale for the restriction is that claims 12-14 introduce new issues that would require further search and consideration. That is not the proper standard for restricting the claims. That is more akin to refusing entry of an amendment after final due to new issues not previously presented. The previous amendment was submitted before the final.

As the examiner has not presented a bona fide restriction requirement, applicant submits that it is improper to withdraw claims 12-14. Applicant submits that the examiner **MUST** examine claims 12-14 as they depend from examined claims and they are not properly restrictable under U.S. patent practice (as set forth in MPEP § 806, *et seq.*).

Amendment

Claim 10 has been canceled, and claims 1-9 and 11-14 have been amended to improve their form and readability. Independent claims 1, 2, and 7 have been amended to further define first and second storing devices for storing encrypted and decrypted MIDI music playing files, and to further define that the music work resource provides recorded representation of music. New claim 15 similar to a claim that appears in a Japanese patent (3864881) granted from the priority application has been added. No new matter has been introduced.

Art Rejection

Claims 1-3 and 7-11 were rejected under 35 U.S.C. § 103(a) as unpatentable over Haruki (USPGP 2002/0126874) in view of Obata (USP 5,147,970) and Eller (USP 5,889,860). Claims 4-6 were rejected under § 103(a) as unpatentable over Haruki in view of Obata, Eller, and Oishi (USP 6,792,539).

Independent claims 1, 2, and 7 each call for extracting MIDI music playing data from a given music work resource, which is in a form of recorded representation of music, for controlling a tone generator for generating musical tone signals. The MIDI music playing data does not correspond to audio data, such as PCM, MP3, AIFF, WAV, that provides actual audio data signals. The MIDI music playing data does not contain any such audio data signals.

As previously explained, Haruki merely discloses “ripping” and compressing audio data (such as PCM, MP3, AIFF, WAV files), not extracting any MIDI music playing data file. In realizing this shortcoming, the examiner relied upon Obata for the proposition that extracting MIDI data would have been obvious. The examiner also relied upon Eller for the proposition that encrypting and decrypting music playing data would have been obvious. Applicant submits that the combination urged by the examiner would not have been tenable because they would not have worked.

Obata discloses a guitar synthesizer that converts an analog wave form generated from each string to MIDI data. A plurality of monophonic pitches that make up polyphonic tones in a chord generated from individual strings need to be separately processed to convert the same to MIDI data because a single analog pickup conventionally used in an electric guitar is incapable of generating separate electrical signals that individually output each note played by each string. That is, the output from a single analog guitar pickup cannot be used to distinguish each of the individual monophonic notes that makeup polyphonic tones, such as a chord. In this respect, discrete pickups (hexa-pickup), each for one string, e.g., 6 channel pickups for a six string guitar, are used to separately convert notes from each string.

One of ordinary skill in the art would have known that it is not possible to extract MIDI data representative of individual pitches from Haruki’s recorded audio data type based on the disclosure of Obata. That is, it is not possible to extract MIDI data from recorded audio files such as PCM, MP3, AIFF, WAV files, because the individual tones that make up music, which is polyphonic in nature, cannot be distinguished and separated from audio files. As the individual tones simultaneously played together, such as a chord, cannot be individually identified, it is not possible to convert music to MIDI data based on the teachings of Obata. Indeed, this is the reason why Obata discloses converting “live” music to MIDI data because it is not possible to convert to MIDI data once the live music has been recorded, unless notes of different strings are separately recorded in a six channel recording.

Applicant submits that the combination urged by the examiner thus would not have worked as there is no teaching anywhere that Haruki’s audio data contains indefinite number of

individual channels that separately track all different generated sounds. Thus, Obata would not have been properly combinable with Haruki for purposes of extracting MIDI data because Haruki's audio data (such as PCM, MP3, AIFF, WAV files) cannot be converted to MIDI data using the technology taught by Obata. Neither Eller nor Oishi would have taught encrypting extracted MIDI data for controlling a tone generator for generating musical tone signals for musical performance, as set forth in independent claims 1, 2, and 7. Note that Eller discloses encrypting a music score data file, not MIDI data for controlling a tone generator for generating musical tone signals for a musical performance. Moreover, neither Eller nor Oishi would have disclosed or taught saving the encrypted and decrypted music playing data file in separate storage devices as set forth in independent claims 1, 2, 7, and 15, as well as deleting the stored data after it has been played for enhanced data handling security as set forth in dependent claim 3 and independent claim 15.

In the last reply, in traversing the art rejection based on Bell (previously applied reference), the term "not" was inadvertently omitted from the sentence "Applicant submits that Bell would [not] have disclosed or taught extracting MIDI data" (page 5 of the 04 December 2006 Amendment). It is apparent from the argument presented on page 6 that the term "not" should have been included in the above-identified sentence.

Conclusion

Applicant submits that claims 1-9 and 11-15 patentably distinguish over the applied references and are in condition for allowance. Should the examiner have any issues concerning this reply or any other outstanding issues remaining in this application, applicant urges the examiner to contact the undersigned to expedite prosecution.

Respectfully submitted,

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28 MAY 2007

DATE

/Lyle Kimms/

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REG. NO. 34,079 (RULE 34, WHERE APPLICABLE)

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